

**REMARKS**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 13, 14, 15 and 20 are cancelled.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-2, 4-8, and 10-12, and 16-19 (14 claims) are now pending in this application.

The Office Action of July 16, 2004, and the references cited therein have been considered. In response to the rejections stated in the Office Action, and the comments in the Office Action, comments are submitted to clarify important distinctions over the cited prior art cited by the Examiner, as explained below. As demonstrated, however, each of the rejections is believed overcome, with the application being placed in condition for allowance. Accordingly, reconsideration and allowance of this application is respectfully requested.

On page 2, paragraph 2 of the Office Action, the Examiner has rejected claims 1, 2, 4-8, and 10-20 under 35 U.S.C. §102(b) as being clearly anticipated by Mallet (USPN: 1,743,974). The Examiner specifically cites The Figure; page 1, lines 93-96; and page 2, lines 16-26 of Mallet.

Applicant respectfully traverses the Examiner's characterization of Mallet as "clearly anticipating" that which is disclosed and claimed in the present application. Applicant has canceled claims 13-15 and 20. Claims 1, 2, 4-8, 16-19 remain in this application.

Applicant submits that Mallet, does not disclose or teach or suggest a “pad element” as being contained in the respective tower as disclosed and claimed in the present application. Mallet merely states, on page 1, lines 93-96 that the liquid flows through the “filling R” into the receptacle at the bottom. There is no indication as to what the “filling” is and the illustration depicts a loose filled material in the tower.

In contrast, the present application shows specifically in Fig. 2, element 22, again in Fig. 3, element 22 as being a pad element. In paragraph 0026 of the present application, Applicant states, “when assembled, the outer panel 18 and inner panel 24 of the pad frame 16 define the pad space for enclosing the pad element 22 and supportively holding the pad element in a substantially vertical orientation without unduly compressing the pad element 22”. Further, in col. 3, paragraph 0027, Applicant discloses that “when assembled, the inner panel 24 is removably attached to the outer panel 18 thereby enclosing the space and retaining the pad element 22 and facilitating pad replacement”. It is clear in the description and illustrations of the present application that the pad element 22 is a single cushion-like member composed of natural or synthetic materials but contained in a pad or cushion configuration, rather than loose material as disclosed in Mallet. There is nothing in the present application that would indicate that the pad is defined any way other than its ordinary meaning. There is no teaching or suggestion in Mallet that discloses a “pad element” as described and claimed in the present application. Each independent claim of the present application, claims 1, 7, and 16 require a “pad element”, accordingly, those independent claims, as amended, are not anticipated by Mallet. Likewise, claims 2, 4-6, and 18; claims 8, 10-12, and 19; claim 17 are dependent claims which depend either directly or indirectly from their respective independent claims are therefore also not anticipated by Mallet. Therefore, Applicant respectfully requests that the Examiner withdraw his rejection of claims 1, 2, 4-6, and 18 under 35 U.S.C. §102(b).

On page 2, paragraph 3 of the Office Action, the Examiner has rejected claims 1, 2, 4-6, 13-15, 18 and 20 under 35 U.S.C. §102(b) as being clearly anticipated by Cooper (USPN: 1,798,307). The Examiner specifically cites Fig. 3; page 1, lines 1-6; page 2, lines 43-47 and 96-98 of Cooper.

Applicant respectfully traverses the Examiner's characterization of Cooper as "clearly anticipating" that which is disclosed and claimed in the present application. Applicant has canceled claims 13-15 and 20. Claims 1, 2, 4-6, and 18 remain in this application.

Cooper discloses louvered openings with the louvers angled in an upper direction as shown in Fig. 3. Cooper also does not disclose or teach or suggest a "pad element" in the tower but rather as best understood, Cooper discloses loose materials contained in the tower as described on page 2, lines 101-114 and as illustrated in Fig. 3 of Cooper.

In contrast, the present application shows specifically in Fig. 2, element 22, again in Fig. 3, element 22 as being a pad element. In paragraph 0026 of the present application, Applicant states, "when assembled, the outer panel 18 and inner panel 24 of the pad frame 16 define the pad space for enclosing the pad element 22 and supportively holding the pad element in a substantially vertical orientation without unduly compressing the pad element 22". Further, in col. 3, paragraph 0027, Applicant discloses that "when assembled, the inner panel 24 is removably attached to the outer panel 18 thereby enclosing the space and retaining the pad element 22 and facilitating pad replacement". It is clear in the description and illustrations of the present application that the pad element 22 is a single cushion-like member composed of natural or synthetic materials but contained in a pad or cushion configuration, rather than loose material as disclosed in Cooper. There is nothing in the present application that would indicate that the pad is defined any way other than its ordinary meaning. There is no teaching or suggestion in Cooper that discloses a "pad element" as described and claimed in the present application. Each independent claim of the present application, claims 1, 7, and 16 require a "pad element", accordingly, those independent claims, as amended, are not anticipated by Cooper. Likewise, claims 2, 4-6, and 18; claims 8, 10-12, and 19; claim 17 are dependent claims which depend either directly or indirectly from their respective independent claims are therefore also not anticipated by Cooper. Therefore, Applicant respectfully requests that the Examiner withdraw his rejection of claims 1, 2, 4-6, and 18 under 35 U.S.C. §102(b).

On page 2, paragraph 4 of the Office Action, the Examiner has rejected claims 13-17 and 20 under 35 U.S.C. §102(b) as being "clearly anticipated by Anderson (USPN: 3,738,621)". The Examiner specifically cites Figure 2; Col. 4, lines 36-45 of Anderson.

Applicant respectfully traverses the Examiner's characterization of Anderson as "clearly anticipating" that which is disclosed and claimed in the present application. Applicant has canceled claims 13-15 and 20. Claims 16 and 17 remain in this application.

Applicant submits that Anderson discloses the pad element 38 to be disposed a spaced distance away from the outer panel 22. Such spaced distance is maintained by the wire retainer grid 44. See Fig. 2 and Col. 4, lines 38-29. In contrast, Applicant discloses and claims, in claim 16, a pad element immediately adjacent to the inner and outer panels of the cooler frame without a wire retainer grid.

Anderson discloses a roof top evaporative cooler for cooling the interior of vehicles. (See Col. 2, lines 47-49.) Anderson also requires a separate convex metal grid 44 to retain the media pad 38 within the cooler. (See Fig. 2 and Col. 4, lines 33-36.)

In contrast, Applicant specifically states that their "inner panel 24 retains the pad element 22 within the pad frame 16, thereby replacing the open wire frame pad retainer of prior art". (See present specification paragraph 0028 and Fig. 3 of the present specification.) Applicant has previously amended independent claims 1 and 7 to indicate that the pad element 22 is held between the outer panel 18 and the inner panel 22 "without a separate pad retainer".

Applicant submits that Anderson is an example of the prior art which the present specification improves upon by eliminating the convex metal grid 44 pad retainer required by Anderson. Applicant "sandwiches" the pad element 22 between the inner panel 24 and outer panel 18 as shown in Fig. 3 of the present application. Accordingly, independent claim 16 as amended is not anticipated by Anderson. Likewise, claim 17 which depends directly from its respective independent claim is therefore also not anticipated by Anderson. Therefore, Applicant respectfully requests that the Examiner withdraw his rejection of claims 16 and 17 (claims 13-15 and 20 are canceled) under 35 U.S.C. §102(b).

On page 2, paragraph 5 of the Office Action, the Examiner states that his prior new matter rejection under 35 U.S.C. §112, first paragraph has been withdrawn.

Applicant has attempted to comment to the extent necessary to distinguish the claims of this patent application over the prior art, but with the intent of not limiting the scope of the invention protection afforded by the patent laws and these claims any further any absolutely necessary. It is respectfully submitted that each outstanding rejection has now been overcome, and that each claim is in condition for allowance.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

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By



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